IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA

MARK D. COURTNEY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,	:	CASE NO. 1:16-CV-2674
	:	**COMPLAINT**
PLAINTIFF,	:	**CIVIL ACTION**
v.	:	**JURY TRIAL DEMANDED**
THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION,	:	
DEFENDANT.	:	

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Mark D. Courtney brings this Class Action Complaint and Demand for Jury Trial against the National Collegiate Athletic Association ("NCAA" or "Defendant") to obtain redress for all persons injured by Defendant's reckless disregard for the health and safety of generations of Southern Utah University ("SUU")[1] student-athletes. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

INTRODUCTION

1. Nearly one-hundred thousand student-athletes participate in NCAA football each year as a part of "America's sport," which draws millions of Americans as enthusiastic patrons every week during the season. On game days, hundreds of thousands of fans fill college football stadiums around the country, while millions more

[1] Southern Utah University was originally founded in 1897 as a teacher's college named "Branch Normal School." It began to participate in the NCAA football program beginning in 1963, and has continued to participate up until the present.

view the games on television or over the Internet. Indeed, whole days of every week are given over to these contests in hundreds of cities and towns around the country. Plaintiff and the Class of once-young, impressionable, and eager-to-please players he represents were motivated by SUU and the NCAA to strive for excellence by doing "whatever it takes" on the football field.

2. For decades, the NCAA football program has served as a training ground for the National Football League ("NFL"), operating as a sports enterprise that closely resembles a professional sports league—particularly in terms of the NCAA's lucrative broadcast contracts and other sundry sources of revenue, which have all accrued to the direct pecuniary benefit of SUU and the NCAA.

3. Despite decades of foreknowledge, the NCAA and SUU have concealed from both student-athletes and the general public the deleterious effects of football's endemic medical touchstones: head trauma, concussions, and neurological injuries. Specifically, the NCAA and SUU have known about, and actively concealed, an epidemic of football-related trauma and illnesses that is debilitating and killing thousands of former NCAA student-athletes.

4. During the course of the NCAA football season, student-athletes may be exposed to more than 1,000 impacts exceeding 10 units of gravitational force ("g's"), with the majority of football-related impacts to student-athlete's heads exceeding 20 g's, and some impacts registering near 100 g's. To put these numbers in the proper context, an unsecured front-seat passenger in a vehicle travelling 25 m.ph. that strikes a wall would experience an impact force of approximately 100 g's. Therefore, cumulatively,

thousands of NCAA student-athletes are being subjected to head trauma that is the equivalent of several hundred car accidents every football season.

5. This repetitive and violent impacts have caused student-athletes to suffer repeated head trauma, and significantly increased their risk for long-term neurological injuries, including: memory loss, dementia, depression, Chronic Traumatic Encephalopathy ("CTE"), Alzheimer's disease, Parkinson's disease, other neurocognitive disorders/injuries, and related symptoms. This means that Plaintiff and the other members of the Class continue to suffer the devastating neurological effects of their on-field injuries, despite the fact that their football careers are long-since over.

6. Unfortunately, the NCAA has known about the debilitative, long-term dangers associated with concussions, concussion-related injuries, and sub-concussive injuries (referred to, collectively, as "traumatic brain injuries" or "TBIs") that result from playing college football. Specifically, a vast and thorough body of scientific research has described and established the inherent dangers posed by TBIs for decades. The NCAA actively and knowingly concealed this information to protect the multi-billion dollar business of "amateur" college football.[2]

7. While Plaintiff and the other members of the Class were in-school and participating in the SUU football program, they were under the NCAA's direct care and supervision. Yet, despite undertaking clear obligations to: (1) provide a safe athletic environment; and (2) safeguard the well-being of student-athletes, the NCAA did not implement adequate procedures and protocols to guard against TBIs, and the resulting

[2] *See, e.g.*, *NCAA Finances*, USA TODAY, *available at* http://sports.usatoday.com/ncaa/finances (last visited Oct. 6, 2016).

neurocognitive disorders and injuries that will affect these student-athletes for the rest of their lives.

8. As a direct result of the NCAA's actions, omissions, and deliberate concealment, Plaintiff and the Class of former student-athletes (defined below) now suffer from various neurological and cognitive medical ailments, including, but not limited to, the symptoms of CTE and other similar neurocognitive disorders.

THE PARTIES

9. Plaintiff, Mark D. Courtney, is an adult male and a citizen of the State of Utah, residing at 4365 West 9580 South, South Jordan, Utah 84009. Plaintiff played NCAA Division II football, serving as a starting receiver during the 1987 and 1988 football seasons at SUU.[3]

10. Defendant National Collegiate Athletic Association is an unincorporated association with its principal office located at 700 West Washington Street, Indianapolis, Indiana. The NCAA represents itself as a tax-exempt organization under Section 501(c)(3) of the U.S. Internal Revenue Code. The NCAA is not organized under the laws of any State. As such, the NCAA is a citizen of the State of Indiana pursuant to 28 U.S.C. § 1332(d)(10). The NCAA regularly conducts business throughout this District, the State of Indiana, and the United States.

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3 At the time that Plaintiff was an NCAA student-athlete at SUU, the school competed in Division II of the NCAA as a member of the now-defunct Western Football Conference. Beginning in 1993, SUU began to compete in Division I-AA of the NCAA. These division distinctions will be further discussed, *supra*, although SUU's division classification does not have any substantive bearing upon Plaintiff's claims, nor upon the NCAA's liability.

JURISDICTION AND VENUE

11. This Honorable Court has subject matter jurisdiction over this case under 28 U.S.C. § 1332(d)(2) because: (1) at least one member of the Class—which consists of at least 100 members—is a citizen of a state different from Defendant; (2) the amount in controversy exceeds $5,000,000, exclusive of interest and costs; and (3) none of the exceptions enumerated under that subsection apply to this action.

12. This Honorable Court has personal jurisdiction over Defendant because it conducts significant business in this District, including establishing consumer and business contracts, and because the unlawful conduct alleged in this Class Action Complaint occurred in, was directed at, and/or emanated in part from this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events giving rise to the Plaintiff's claims occurred in and/or emanated from this District and because the NCAA resides in this District.

FACTUAL BACKGROUND

I. The NCAA Had a Duty to Protect Student-Athletes

14. The NCAA is the governing body of collegiate athletics, overseeing 23 college sports and over 400,000 participating student-athletes, including the SUU football program. According to the NCAA, "[m]ore than 1,200 schools, conferences, and affiliate organizations collectively invest in improving the experiences of student-athletes—on the field, in the classroom, and in life."[4]

15. To accommodate the wide spectrum of student-athletes at its member institutions, the NCAA has three different "divisions" of intercollegiate athletic

4 *Membership*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (May 17, 2016), *available at* http://www.ncaa.org/about/who-we-are/membership.

competition. Division I[5] is the highest level of intercollegiate athletes sanctioned by the NCAA and includes many well-known universities, with high-ranking teams, larger operating budgets, better athletic facilities, and greater scholarship endowments. However, Division II and Division III schools account for a lion's share of the actual collegiate athletics programs, with over four times as many participating member institutions as Division I.[6]

16. Each NCAA Division is composed of several "conferences" to facilitate regional league play. At the time that Plaintiff was a student-athlete at SUU, the school was a member of the now-defunct Western Football Conference, and has since changed its conference membership several different times. In conjunction with SUU and the relevant conferences, the NCAA is responsible for overseeing and administering the SUU football program. Accordingly, SUU—and each of that institutions' student-athletes—agreed to abide by the rules and regulations issued by the NCAA regulating SUU's collegiate football program.

17. The NCAA governs and regulates the SUU football program and owes a duty of care to the student-athletes under its supervision and authority.

18. When it was originally founded as the Intercollegiate Association of the United States ("IAAUS"), the NCAA was lauded as "dedicated to safeguarding the well-

[5] NCAA athletics actually organize Division I into "Division I-A" and "Division I-AA" based on various attendance and financial aid requirements that are not directly relevant to this cause of action at this time. Division II and Division III schools also operate under NCAA-imposed requirements related to the number of sponsored sports at an institution, financial aid limits, and athletic scheduling. *See*, *e.g.*, *Divisional Differences and the History of Multidivisional Classification*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, *available at* http:// http://www.ncaa.org/about/who-we-are/membership/divisional-differences-and-history-multidivision-classification (last visited Oct. 4, 2016).

[6] Specifically, there are 128 Division I schools, while approximately 613 schools participate as members of Division II and Division III athletics.

being of student-athletes and equipping them with the skills to succeed on the playing field, in the classroom and through life."[7]

19. In fact, the IAAUS—renamed in 1910—was created at the behest of U.S. President Theodore Roosevelt, who convened a group of university professors and athletic coaches to discuss the alarming rates of deaths and injuries resulting from college football contests.[8] Even at its inception, the NCAA's singular stated objective was the promotion of student-athlete safety and well-being. That mission clearly continues today, as the NCAA continues to claim that it is "dedicated to safeguarding the well-being of student-athletes and equipping them with the skills to succeed on the playing field, in the classroom[,] and throughout life."[9]

20. Moreover, as the NCAA makes clear in its communications regarding membership, the overseeing of collegiate athletics is a cooperative and all-inclusive task that is spread amongst many different pedagogical agents: "College and university presidents and chancellors guide each division, supported by an extensive committee structure guided by athletic administrators, faculty[,] and student-athlete representatives . . . [thereby, each] division creates its own rules that follow the overarching principles of the NCAA."[10]

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7 *About the NCAA*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (May 17, 2016), *available at* http://www.ncaa.org/about (last visited Sept. 29, 2016).

8 *See, e.g.*, *Formation of the NCAA: An Unexpected Beginning*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (Nov. 21, 2012), *available at* http://ncaahistoryguide.com/formation-ncaa-unexpected-beginning/#more-52.

9 *About the NCAA*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION, http://www.ncaa.org/about (last visited Oct. 4, 2016).

10 *Membership*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (May 17, 2016), *available at* http://www.ncaa.org/about/who-we-are/membership.

21. The "overarching principles" of the NCAA—not least of all its commitment to safeguarding the health and well-being of student-athletes—are enshrined in the NCAA Constitution, which states, in relevant part, as follows:

> The purposes of this Association are:
>
> (a) To initiate, stimulate and improve intercollegiate athletics programs for student-athletes;
>
> (b) To uphold the principal of **institutional control of, and responsibility for**, all intercollegiate sports in conformity with the constitution and bylaws of this [A]ssociation . . . .

NCAA Constitution, Art. 1, §§ 1.2(a)-(b) (emphasis added).

22. Pursuant to its "Fundamental Policies," the NCAA Constitution also states that "[m]ember institutions shall be obligated to apply and enforce this legislation, and the enforcement procedures of the [NCAA] shall be applied to an institution when it fails to fulfill its obligation." NCAA Constitution, Art. 1, § 1.3.2.

23. Article 2.2 of the NCAA Constitution ("The Principle of Student-Athlete Well-Being") is highly instructive to the instant controversy and provides that "[i]ntercollegiate athletics programs shall be conducted in a manner designed to protect and enhance the physical and educational well-being of student[-]athletes."

24. Furthermore, Article 2.2.3 of the NCAA Constitution ("Health and Safety") unequivocally states that "[i]t is the responsibility of each member institution to protect the health of, and provide a safe environment for, each of its participating student[-]athletes."

25. To these ends, the NCAA devises and maintains standard athletic regulations and requirements that govern and bind its member institutions, including, but not limited, the NCAA Constitution, the NCAA Operating Bylaws, the NCAA

Administrative Bylaws, and the relevant NCAA Division Manuals. These documents provide guidance on game rules, student-athlete eligibility, scholarship parameters, and institutional obligations regarding the well-being and safety of student-athletes:

> Each institution shall comply with all applicable rules and regulations of the [NCAA] in the conduct of its intercollegiate athletics programs . . . . Members of an institution's staff, student-athletes, and other individuals and groups representing the institution's athletic interests shall comply with the applicable [NCAA] rules, and the member institution shall be responsible for such compliance.

NCAA Constitution, Art. 2, § 2.8.1.

26. In addition to the documents described above, the NCAA also publishes annual guidelines regarding student-athlete health and safety in the NCAA Sports Medicine Handbook ("the Handbook"). The Handbook includes the NCAA's official policies for the prevention and treatment of sports-related injuries, as well as parameters regarding when injured student-athletes may resume participation in athletics following an injury. The Handbook unequivocally recognizes that "student-athletes rightfully assume that those who sponsor intercollegiate athletics have taken reasonable precautions to minimize the risk of injury from athletics participation."[11]

27. In addition to setting forth minimum requirements, the NCAA Constitution also promises to directly aid member institutions in their ongoing compliance efforts: "[The NCAA] shall assist the institution in its efforts to achieve full compliance with all rules and regulations." *See, e.g.*, NCAA Constitution, Art. 2, § 2.8.2.

28. Beyond individual academic institutions, the NCAA Constitution also contemplates and addresses the rights and responsibilities of intercollegiate athletics

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[11] *See, e.g.*, David Klosser, *2013-14 NCAA Sports Medicine Handbook*, NATIONAL COLLEGIATE ATHLETIC ASSOCIATION (Aug. 2013), *available at* https://www.ncaa.org/sites/default/files/2013-14%20Sports%20Medicine%20Handbook.pdf.

conferences, which are entitled to all of the privileges of active member institutions (save the right to compete in NCAA championships). *See, e.g.*, NCAA Constitution, Art. 3, § 3.02.3.2. Furthermore, "conferences of the [NCAA] agree to administer their athletics programs in accordance with the constitution, bylaws[,] and other legislation of the [NCAA]." NCAA Constitution, Art. 3, § 3.3.4.

29. Therefore, the NCAA holds itself out as a proponent of, authority regarding, and regulatory institution overseeing the prevention and treatment of sports-related injuries affecting student-athletes. In particular, the NCAA's governing documents indicate that its member institutions—including SUU—rely upon the NCAA for guidance and support on issues of student-athlete safety and well-being, including the treatment of injuries sustained by NCAA student-athletes.

30. When compared to Plaintiff and the other members of the Class, the NCAA was in a superior position to know about, recognize, and mitigate the risks of TBIs.

II. Decades of Medical Research has Unequivocally Established the Dangers Associated with Football-Related TBIs

31. Numerous medical studies have firmly established that repetitive trauma to the head can result in TBIs, and are associated with heightened risks of long-term neurological disorders and illnesses, including, but not limited to: memory loss, dementia, depression, CTE, Alzheimer's disease, Parkinson's disease, other neurocognitive disorders/illnesses, and related symptoms. To better understand the nature of this substantial body of research, a brief review of the material follows:

A. *An Overview of Football-Related TBIs*

32. A "concussion" is defined as a TBI caused by a person's head moving rapidly. This movement causes the brain to bounce and twist inside of the skull, which can damage the brain, primarily, and also catalyze chemical changes in the brain.

33. Typically, the brain is cushioned by the presence of spinal fluid between the soft brain tissue and the rigid bone of the skull. This layer of spinal fluid is enough to prevent the brain from impacting the skull during "everyday" movements. But, even relatively minor impacts—including indirect impacts that do not directly strike the head, such as those that produce a "whiplash" effect in the neck—can produce sufficient brain movement to breach the permeable barrier of the spinal fluid and cause the brain to "knock" against the skull. These types of intracranial impacts produce concussions and other TBIs.

34. Concussions typically occur when linear and rotational accelerations impact the brain through direct impacts to the head, or through indirect "whiplash" impacts. As aforementioned, student-athletes playing a full season of football can expect to receive more than 1,000 impacts exceeding 10 g's (or, slightly more gravitational force than that experienced by fighter pilots executing "maximal" maneuvers). However, the majority of football-related impacts **exceed** 20 g's.

35. Dr. Kevin Guskiewicz, of the University of North Carolina's Sports Concussion Research Program, compared the impacts sustained in a routine football practice to crashing a car: "If you drove your car into a wall at twenty-five miles per hour and you weren't wearing your seat belt, the force of your head hitting the windshield

would be around 100 [g's]: in effect, [a player who sustained two hits about 80 g's], had two car accidents that morning."[12]

i. *TBI Symptoms*.

36. Following a severe impact, student-athletes may begin exhibiting TBI symptoms, including, but not limited to:

- feeling dazed, dizzy, or lightheaded (*i.e.*, "seeing stars");
- memory loss, including short-term memory loss and retrograde amnesia;
- nausea and/or vomiting;
- headaches;
- blurred vision and light sensitivity;
- slurred speech, or difficulty communicating lucidly;
- difficulty concentrating, thinking, or making decisions;
- diminished coordination and balance (including hand-eye coordination, such as being unable to catch a thrown ball);
- anxiety and irritability; and/or
- exhaustion.

37. Student-athletes may not be able to immediately recognize the symptoms of TBI (or, worse yet, the symptoms themselves may interfere with their ability to evaluate and recognize these life-threatening problems), which creates the likelihood of further, more-serious injury—student-athletes who return to active athletic

[12] Malcolm Gladwell, *Offensive Play*, THE NEW YORKER (Oct. 19, 2009), *available at* http:// http://www.newyorker.com/magazine/2009/10/19/offensive-play.

participation before they have adequately healed from previous TBIs place themselves at ever-increasing risks of seriously compounding their injuries.

ii. *Medical Treatment of TBIs*

38. After suffering a TBI (such as a concussion), a student-athlete's brain requires significant time to heal. Doctors generally prohibit such individuals from returning to "normal" activities—up to, and certainly including, full-contact sports—until all TBI-related symptoms have ceased because an already injured brain is particularly vulnerable to further trauma.

39. The time required for such healing varies from person to person, and injury to injury, with TBI-related symptoms sometimes persisting for weeks at a time.

40. Individuals who fail to recover from TBIs within a few weeks are diagnosed as suffering from "post-concussion syndrome." Those diagnosed with post-concussion syndrome are typically referred to medical specialists to address their symptoms, which can last for months, years, or become permanent.

41. As such, TBIs constitute a cumulative, long-term, and debilitating medical problem in many circumstances.

B. *The Long-Term Dangers of TBIs are Well-Documented*

42. The two leading studies examining the long-term effects of TBIs were conducted at Boston University's Center for the Study of Traumatic Encephalopathy and the Brain Injury Research Institute (located near Pittsburgh, PA). These studies enumerate the "devastating consequences" of repeated TBIs, including increased risks of depression, dementia, suicide, and a host of other medical problems. The studies have

also demonstrated that repeated TBIs trigger the progressive degeneration of brain tissue, including the build-up of an abnormal protein ("tau").

43. Between 2002 and 2007, Dr. Bennett Omalu of the Brain Injury Research Institute examined the brains of five former NFL athletes: Andre Waters, Mike Webster, Terry Long, Justin Strzelcyyk, and Damien Nash. Four of these players died under tragic and strange circumstances: Waters and Nash committed suicide, Webster died of heart failure while homeless and cognitively impaired, and Strzelcyyk died in a car accident that resulted from him driving the wrong way down a highway at 90 m.p.h. Four of the five brains were found to have telltale signs of CTE, which is a progressive degenerative disease of the brain affecting people with histories of repetitive TBIs.

44. Dr. Robert Cantu, of the Boston University Center for the Study of Traumatic Encephalopathy, has found evidence of CTE in 96 percent of the autopsies performed on the brains of former NFL players (90 out of 94 subjects). Furthermore, Dr. Cantu has found evidence of CTE in 79 percent of the autopsies performed on the brains of all former football players (**regardless of the level of the sport that they may have played while alive**).

45. Reaching similar conclusions, Dr. Omalu asserts that more than 90 percent of former NFL players suffer from some form of CTE.

46. Unfortunately, medical studies similar to the ones produced by Drs. Omalu and Cantu date back to the early Twentieth Century. Beginning with studies examining boxing-related TBIs during the 1920's, medical science has long-recognized the debilitating effects of TBIs on athletes. That repetitive head trauma and TBIs cause

permanent brain damage and produce increased risks of long-term neurocognitive disorders has been well-established for nearly a century.

47. For example, Dr. Harrison S. Martland produced and published a study titled "Punch Drunk" in the *Journal of the American Medical Association* in 1928 describing the spectrum of clinical abnormalities observed in some 50 percent of boxers who had suffered a considerable impact to the head (or been knocked out).[13] .

48. Numerous later studies confirmed Martland's initial findings, which established that boxers who had suffered TBIs displayed signs of dementia, motor function impairment, and a "Parkinsonian" pattern of progressive neurological decline.[14]

49. Dovetailing with these growing concerns over TBIs and their effects on athletes, at its 17th Annual Meeting in December 1937, the American Football Coaches Association decried the prevalent practice of permitting concussed student-athletes to continue to participate in athletics, and urged officials to prevent athletes from participating in contact sports after suffering even a single concussion.[15]

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13 *See*, *e.g.*, Harrison S. Martland, *Punch Drunk*, 91 J. AM. MED. ASS'N 1103 (1928)

14 *See*, *e.g.*, Drs. Ewald W. Busse & Albert J. Silverman, *Electroencephalographic Changes in Professional Boxers*, 149 J. AM. MED. ASS'N 1522, 1522 (1952) ("[T]he mild psychic changes observed in a high percentage of boxers . . . are due to brain damage, which is also responsible for the less frequently seen, so-called 'punch-drunk' person, who is in fact in a state of traumatic dementia and reveals severe psychic and neurological abnormalities."); M. Sercl & O. Jaros, *The mechanisms of cerebral concussion in boxing and their consequences*, 3 WORLD NEUROL 351, 351-58 (May 1962); C. Mawdsley & F.R. Ferguson, *Neurological Diseases in Boxers*, 282 LANCET 7312, at 795-801 (Oct. 19, 1963); C.J. Bruton, J.A.N. Corsellis, & Dorothy Freeman-Browne, *The aftermath of boxing*, 3 PSYCHOLOGICAL MEDICINE 3, at 270-303 (August 1973).

15 Floyd R. Eastwood, *Seventh Annual Report on Football Injuries and Fatalities*, PROCEEDINGS OF THE SEVENTEENTH ANNUAL MEETING OF THE AMERICAN FOOTBALL COACHES ASSOCIATION (Dec. 29, 1937), at 25 ("During the past seven years the practice has been too prevalent of allowing players to continue playing after a concussion. Again this year this is true . . . . **Sports demanding personal contact should be eliminated after an individual has suffered one concussion**." (emphasis added))

50. Thereafter, in 1952, an article in the *New England Journal of Medicine* recommended a "three-strike rule" for concussions in football, whereby athletes would be required to cease playing football, **permanently**, after receiving three concussions.[16]

51. In 1967, Drs. John R. Hughes and D. Eugene Hendrix published a study indicating that severe impacts negatively affected brain activity in football by monitoring the effects with electroencephalograms ("EEGs") in real time.[17]

52. These studies, along with many, many other pieces of accepted scholarly medical research, have warned of the dangers of other football-related TBIs, and collectively establish that:

- repetitive head trauma in contact sports, including football, carries the potential for devastating, long-term negative effects on neurological function;
- encephalopathy ("*dementia pugilistica*") is caused by repeated sub-concussive and concussive blows to the head;
- acceleration and rapid deceleration of the head that results in a brief loss of consciousness results in tearing of the axons (*i.e.*, cells) of the brain stem;
- there is a direct relationship between an athlete's neurological pathology and the length of his career in contact sports;
- concussions cause immediate retrograde memory issues;
- TBIs require recovery time without the risk of re-injury or complications;
- football players suffering from concussions require significant rest before being subjected to further potential trauma; and,

[16] *See*, *e.g.*, Dr. Augustus Thorndike, *Serious Recurrent Injuries of Athletes—Contraindications to Further Competitive Participation*, 247 NEW ENG. J. MED. 554, 555-56 (1952).

[17] *See*, *e.g.*, Drs. John R. Hughes & D. Eugene Hendrix, *Telemetered EEG from a Football Player in Action*, ELECTROENCEPHALOGRAPHY & CLINICAL NEUROPHYSIOLOGY 24:183-86 (1967).

- even minor head trauma can lead to neuropathological and neurophysiological alterations, including: (1) neuronal damage, (2) reduced cerebral blood flow, (3) altered brainstem evoked potentials, and (4) reduced information-processing speeds.

53. These early studies offered numerous recommended changes to accommodate TBIs and concussion-related illnesses, safely, within the game of football, as did the studies that followed, which built off of this initial body of work.[18]

54. Recently, the pace and scope of this research has intensified in response to the growing epidemic of former athletes suffering from symptoms. Beginning in 1991, Dr. Cantu, the American Academy of Neurology, and the Colorado Medical Society developed and issued "return-to-play" criteria for athletes suspected of having suffered TBIs while playing football. These guidelines were further revised in 2001 in response to the growing field of research related to football TBIs.

55. A pair of NCAA-specific studies published in 2003 concluded that NCAA football student-athletes whom have previously sustained a TBI are more likely to suffer future TBIs, and also began to truly identify the complex nature of these injuries.[19]

56. A conference of neurological experts gathered in Prague in 2004 and provided recommendations for athletes suffering TBIs and concussive injuries in

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[18] *See, e.g.*, Richard C. Schneider, *Head and Neck Injuries in Football: Mechanisms, Treatment, and Prevention*, (1st ed. 1973); D. Gronwall & P. Wrightson, *Cumulative effect of concussion*, 2 LANCET 7943, at 995-97 (Nov. 22, 1975) (concluding that non-athletes who received multiple TBIs suffered cumulative psychological effects, and extrapolating those effects to athletes); Arthur L. Benton, Howard M. Eisenberg, & Harvey S. Levin, *The University of Virginia Prospective Study of Mild Head Injury in Football*, *in* MILD HEAD INJURY, at 265-72 (1st ed. 1989) (review of 1982 study examining 2,350 players at ten different universities to establish a baseline with regard to the effects of TBIs on student-athletes).

[19] *See, e.g.*, Michael McCrea, *et al.*, *Acute Effects and Recovery Time Following Concussion in Collegiate Football Players, the NCAA Concussion Study*, J. AM. MED. ASS'N (Nov. 19, 2003) (stating that student-athletes suffering from TBIs "may require several days for recovery of symptoms, cognitive dysfunction, and postural instability after [a TBI]," which are "followed by a complex cascade of ionic, metabolic, and physiological events that can adversely affect cerebral function for several days to weeks.").

football, ice hockey, rugby, and other sports based on the research and best practices available at the time. Overall, the experts recommended a policy of refusing to allow symptomatic players to return to the field, coining the phrase: "When in doubt, sit them out."[20]

57. Thereafter, between 2005 and 2007, the University of North Carolina's Center for the Study of Retired Athletes published a series of survey-styled papers demonstrating the strong correlations between depression, dementia, early-onset Alzheimer's disease, and other forms of cognitive impairment suffered by former NFL players and the number of TBIs those players suffered during their careers.[21]

58. While the NCAA knew for decades of the harmful effects of TBIs upon student-athletes, they ignored these facts and failed to institute meaningful responses and policies to warn and/or protect the student-athletes, including Plaintiff and the other members of the Class. For the NCAA, the continued expansion and lucrative operations of "amateur" college football were simply too profitable to risk.

III. The NCAA Breached Its Duties to Student-Athletes by Concealing the Dangers of TBIs and Refusing to Implement Reasonable Management Protocols.

59. Despite having full knowledge regarding the devastating, long-term effects and risks associated with TBIs sustained by and while playing college football, the NCAA

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20 *See, e.g.*, Paul McCrory, *et al.*, *Summary and agreement statement of the 2nd International Conference on Concussion in Sport, Prague 2004*, BRITISH J. SPORTS MED., 39:196-204 (2005), *available at* http://bjsm.bmj.com/content/39/4/196.full. These findings echoed, and built upon, the initial round of medical protocols established by a similar convention in 2001. *See, e.g.*, *Summary and agreement of the First International Conference on Concussion in Sport, Vienna 2001. Recommendations for the improvement of safety and health of athletes who may suffer concussive injuries*, BRITISH J. SPORTS MED., 36(1):6-10 (Feb. 2002), *available at* http://bjsm.bmj.com/content/36/1/6.long. These conferences were attended, principally, by American doctors specializing in the neurological fields of medical practice.

21 Alan Schwarz, *Concussions Tied to Depression in Ex-NFL Players*, THE NEW YORK TIMES (May 31, 2007), *available at* http://http://www.nytimes.com/2007/05/31/sports/football/31concussions.html.

and SUU actively concealed these risks (including memory loss, dementia, depression, and CTE) from its student-athletes and the general public.

60. Upon information and belief, during every decade referenced above, the NCAA and SUU were advised by physicians, researchers, and scientists concerning the severe, long-term medical risks associated with playing college football, including TBIs.

61. Rather than fully apprising SUU student-athletes of the danger, or implementing protocols to safeguard and protect their student-athletes from TBIs (as promised through the binding terms of several governing documents, including, but not limited to, the NCAA Constitution), the NCAA and SUU failed to adopt the internationally accepted guidelines and "return-to-play" parameters described in the voluminous body of research sampled above until 2010.

62. In flagrant disregard for the vast body of known and vetted scientific research, and in derogation of the authority vested in them by the precepts governing NCAA athletics, the NCAA designed and orchestrated policies regarding football practices and games that:

- ignored the medical risks to Plaintiff and the members of the Class;
- aggravated the medical risks to Plaintiff and the members of the Class;
- failed to apprise Plaintiff and the members of the Class concerning the demonstrated links between TBIs sustained playing football and the aforementioned neurological illnesses and conditions;
- failed to implement or enforce a reasonable system to prevent or mitigate the harms suffered by Plaintiff and the members of the Class; and,
- failed timely to implement "return-to-play" protocols and other internationally accepted norms related to TBIs suffered while playing sports.

63. Indeed, the NCAA failed to acknowledge the dangers of TBIs in the Handbook until 1994, when a section captioned "Guideline 20: "Concussions and Second Impact Syndrome" ("Guideline 20") was added. However, rather than mandating best practices for its member institutions, as required by its governing documents emphasizing the principle of "institutional control," Guideline 20 left the management of TBIs to the discretion of individual institutions.

64. For example, while the 1998–99 version of Guideline 20 reported that "[c]oncussion and the resulting potential complications, such as second-impact syndrome, are potentially life-threatening situations that student-athletes may suffer as a result of their athletics participation," it also provided that the NCAA "does not endorse any specific concussion grading scale or return-to-play criteria."

65. In this way, Guideline 20 was an attempt by the NCAA to disclaim liability, while shirking its obligations to safeguard the well-being of student-athletes, and to oversee the athletics programs administered by SUU.

66. Despite having **actual knowledge** of the dangers of TBIs, the NCAA refused to implement, endorse, or even recommend specific best practices or TBI-related safety measures to SUU, such as a concussion grading scale or return-to-play criteria.

67. Moreover, the NCAA and SUU failed to comply with, or enforce, Guideline 20's explicit requirement that "[a] student athlete rendered unconscious for any period of time should not be permitted to return to the practice or game in which the head injury occurred. In addition, no student-athlete should be allowed to return to athletics activity while symptomatic."

68. Ultimately, until 2010, the NCAA:

- failed to implement guidelines to prevent repeated TBIs;
- failed to educate student-athletes about the increased risk of TBIs in football;
- compelled and coerced Plaintiff and the other members of the Class to ignore TBI-related symptoms and continue to play football without allowing adequate time for student-athletes to heal from TBIs;
- failed to contact Plaintiff and the other members of the Class after they left school to inform them that they had been exposed to an increased risk of long-term neurocognitive disorders through the TBIs they sustained while playing football;
- failed to recommend or enforce "return-to-play" protocols; and/or
- failed to conduct a football program that proactively rewarded Plaintiff and the other members of the Class for receiving and inflicting TBIs.

69. Moreover, generations of SUU student-athletes, including Plaintiff and the other members of the class, sustained TBIs—and inflicted TBIs on other players—for the purposes of advancing the SUU football program by winning games, thereby accruing favorable publicity to the NCAA and SUU, and generating millions of dollars in revenue for NCAA, SUU, and various other third parties.

70. It was not until April 2010, under mounting public pressure and negative publicity, that the NCAA finally made definitive changes to its concussion treatment protocols by adopting legislation requiring all of its member institutions to have a Concussion Management Plan ("CMP") in place for all sports.

71. Under this new NCAA concussion policy, member institutions were required to have a CMP on file "such that a student-athlete who exhibits signs, symptoms, or behaviors consistent with a concussion shall be removed from practice or

competition and evaluated by an athletics healthcare provider with experience in the evaluation and management of concussions."

72. The NCAA concussion policy further provided that student-athletes diagnosed with a TBI "shall not return to activity for the remainder of that day" and that the team physician would be required to gauge medical clearance.

73. Finally, the NCAA concussion policy required students to sign a statement "in which they accept the responsibility for reporting their injuries and illnesses, including signs and symptoms of concussion" to medical staff and noted that student-athletes would be provided with educational materials.

74. However, this policy, too, is deeply flawed and inadequate: due to the very nature of concussions, student-athletes suffering from TBIs, and the related symptoms, are in no position to medically assess themselves, or to provide informed consent to continue participating in athletics.

75. As the NCAA is well aware, the types of questions used to screen student-athletes for TBIs include: "what is your name?"; "what year is it?"; and "what sport are we playing?" These are the types of questions that student-athletes experiencing TBIs routinely fail to answer correctly. A student-athlete who cannot state their own name is in no condition to make an informed decision about whether or not to continue participating in athletics, and is entirely dependent on others—including the NCAA and SUU—to identify TBIs in real-time and take appropriate remedial action.

76. For an injured student-athlete, the NCAA stands in the role of a guardian tasked with making decisions in the student-athlete's best interest. For decades, the NCAA has failed to honor its legal obligations by fulfilling that role and have, instead,

acted solely in their own pecuniary interests, all to the life-long detriment of thousands of student-athletes.

77. These still-deficient policies were implemented far too late. Plaintiff and the other members of the Class have suffered reasonably foreseeable harm as a result of the NCAA's actions and inactions.

IV. Facts Specific to Plaintiff

78. Plaintiff Mark D. Courtney was a student-athlete in SUU's football program, and played two seasons of NCAA Division II football as a starting receiver from 1986-1988. During his time playing for SUU, Courtney suffered "multiple concussions and severe head injuries" from both gameplay and practice.

79. As a starting receiver, Courtney was the recipient of numerous impacts throughout his two seasons with SUU. On at least three (3) separate occasions, Courtney suffered TBIs as a result of catching, or attempting to catch, potential touchdown receptions. At least one of these instances occurred during a game versus Sacramento State, which SUU played during both of the seasons in question.[22]

80. In at least one other separate instance, during practice, Courtney was "punched" by an SUU defensive end, and, thereafter, "grabbed by the facemask." This necessitated Courtney having to sit out for at least part of the practice, although it attracted no particular ameliorative efforts by SUU staff or NCAA personnel.

81. Over time, Courtney has begun to experience the devastating consequences of the TBIs that he suffered while participating in SUU's NCAA football

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[22] *See, e.g.*, *Southern Utah Football History*, THUNDERBIRD ATHLETIC FOUNDATION, *available at* http://www.suutbirds.com/fls/20100/Football/07pdf/4-Year%20Results.pdf?DB_OEM_ID=20100 (last visited Oct. 5, 2016).

program. He has struggled with the symptoms attendant to these neurological disorders, including severe depression, increased irritability and aggression, loss of memory, anxiety, inability to focus, loss of cognitive function, decreased job performance, suicidal ideation, frequent headaches, and diminished impulse control.

82. In 1998, Courtney was diagnosed as suffering from bipolar disorder with psychosis, and has been on long-term disability since 2003 as a result of the neurocognitive disorders from which he currently suffers.

83. In addition to preventing him from holding a regular job, Courtney's deteriorating mental state has severely impacted his ability to be present and involved as a father to his two younger children, and has significantly negatively impacted his 25-year relationship with his wife.

84. During the time Courtney was a student-athlete at SUU, and through until 2010, the NCAA and SUU failed to implement any TBI management protocols or policies. Likewise, during that time, the NCAA and SUU failed to implement any meaningful "return-to-play" guidelines regarding student-athletes suffering from TBIs.

85. While Courtney was being subjected to severe, repetitive TBIs for the profit and promotion of the NCAA and SUU, they never informed or educated Courtney regarding the short-term and long-term health risks associated with TBIs

86. Furthermore, the NCAA and SUU never instituted appropriate health-and-safety protocols to monitor, manage, and mitigate risks associated with TBIs—throughout the years Plaintiff and the other members of the Class were student-athletes at SUU. Despite being aware of the many cranial blows suffered by Courtney and the other members of the Class, neither the NCAA nor SUU took appropriate actions.

87. During the time in which Plaintiff and the other members of the Class were SUU student-athletes, the NCAA ignored the medical evidence and recommendations of experts regarding TBIs, and failed to protect the health and well-being of its student-athletes who participated in the SUU football program, including Plaintiff and the other members of the Class.

CLASS ACTION ALLEGATIONS

88. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure Rule 23(b)(3) on behalf of himself and a Class defined as follows:

> **Class**: All individuals who participated in the SUU varsity football program between 1952 and 2010.

89. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or their parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

90. **Numerosity**: The exact number of the members of the Class is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, hundreds of SUU football players fall into the definition of the Class. Members of the Class can be identified through records in the possession of Defendant and SUU.

91. **Commonality**: There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members. Common questions for the Class include, but are not limited to the following:

a. whether the NCAA had a duty to adequately warn and educate SUU student-athletes, including Plaintiff and the other members of the Class, about the dangers and symptoms of TBIs;

b. whether the NCAA had a duty to enact rules and procedures to protect SUU student-athletes, including Plaintiff and other members of the Class, from sustaining TBIs;

c. whether the NCAA's conduct as alleged herein constitutes and breach of duty;

d. whether the NCAA's conduct as alleged herein constitutes negligence;

e. whether the NCAA's conduct as alleged herein constitutes breach of contract;

f. whether the NCAA's conduct as alleged herein constitutes fraudulent concealment;

g. whether the NCAA was unjustly enriched at the expense of Plaintiff and the Class; and

h. whether Plaintiff and the other members of the Class are entitled to equitable relief, including actual and compensatory damages, and other injunctive relief.

92. **Typicality**: Plaintiff's claims are typical of the claims of the other members of the Class, as Plaintiff and the other members of the Class sustained damages arising out of the wrongful conduct of the NCAA based upon the same negligent conduct.

93. **Adequate Representation**: Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel competent and experienced in

complex litigation and class actions. Plaintiff has no interest antagonistic to those of the Class, and the NCAA have no defenses unique to Plaintiff.

94. **Predominance and Superiority**: Class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy, as joinder of all members is impracticable. The damages suffered by the individual members of the Class are relatively small in comparison to the burden and expense of individual prosecution of the complex litigation necessitated by the NCAA's actions. It would be virtually impossible for the members of the Class to obtain effective relief from the NCAA's misconduct on an individual basis. Even if members of the Class themselves could sustain such individual litigation, it would not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

COUNT I:
NEGLIGENCE
(*Individually and on Behalf of the Class as Against Defendant*)

95. Plaintiff incorporates by reference all of the foregoing allegations and statements.

96. From its inception and by virtue of its role as the governing body in college athletics, Defendant NCAA has historically assumed a duty to protect the health and safety of all student-athletes at its member institutions. The NCAA has also assumed a

duty of care by voluntarily taking steps to protect and promote the health and safety of the student-athletes under its purview, including promulgating safety handbooks and regulations. That duty included an obligation to supervise, regulate, and monitor the rules of its governed sports, and to provide appropriate and up-to-date guidance and regulations to minimize the risk of injury to its student-athletes participating in football.

97. The NCAA's duties included an obligation to supervise, regulate, and monitor the rules of the SUU football program and provide appropriate and up-to-date guidance and regulations to minimize the risk of long-term and short-term traumatic brain injuries to SUU student-athletes.

98. The NCAA had an additional duty to educate SUU student-athletes regarding the proper ways to evaluate and treat TBIs during football games and practices, afterwards, and to inform SUU student-athletes of the long-term risks associated with football-related TBIs. The NCAA's obligations further subsumed a duty to educate SUU regarding the evaluation and treatment of TBIs, and a duty to warn student-athletes of the immediate dangers of TBIs and the attendant long-term risks of neurological dysfunction.

99. The NCAA had a duty not to conceal material information from SUU student-athletes, including Plaintiff and the other members of the Class.

100. The NCAA breached their duties to Plaintiff and the other members of the Class by failing to implement, promulgate, or require appropriate and up-to-date guidelines regarding the evaluation and treatment of TBIs on the playing/practice fields, in locker rooms, and in the days, weeks, and months after SUU football players

sustained TBIs, as well as providing treatment for the latent and long-term effects of TBIs. These failings include, but are not limited to:

a. failing to recognize and monitor TBIs during football practices and games;

b. failing to inform student-athletes of the dangers of concussive injuries;

c. failing to implement appropriate "return-to-play" procedures and regulations for student-athletes who sustained TBIs and/or were suspected of sustaining such injuries;

d. failing to implement procedures to monitor the health of student-athletes who have sustained (or are suspected of sustaining) TBIs;

e. failing to inform the extended families of student-athletes regarding TBIs sustained by their family member; and

f. failing to provide adequate notification, warning, and treatment for the direct and latent neurocognitive and neurobehavioral effects of TBIs, after the time Plaintiff and other members of the Class left SUU.

101. The NCAA breached its duties to Plaintiff and the other members of the Class by fraudulently concealing, failing to disclose, failing to recognize, and/or being willfully blind to: (1) material information regarding the long-term risks and effects of repetitive TBIs that the NCAA possessed or should have possessed; (2) the dangers of TBIs; and (3) the proper methodologies for the NCAA, its employees and agents, student-athletes, SUU, and other related third parties to evaluate, treat, and avoid TBIs.

102. Plaintiff and the other members of the Class relied upon the guidance, expertise, and instruction of the NCAA in understanding the risks associated with the serious and life-altering medical issues attendant to TBIs suffered while playing football.

103. At all relevant times, the NCAA had superior knowledge of material information regarding the effect of repeated TBIs. Because such information was not readily available to Plaintiff and the other members of the Class, the NCAA knew or

should have known that Plaintiff would act and rely upon the guidance, expertise, and instruction of the NCAA on these crucial medical issues, while student-athletes at SUU and thereafter.

104. Repetitive TBIs during college football practices and games have a pathological and sinisterly latent effect on the brain. Repetitive TBIs cause deformation, twisting, shearing, and stretching of neuronal cells such that multiple forms of damage take place, including the release of small amounts of chemicals within the brain, such as the "tau" protein, which is a signature pathology of the same phenomenon as *dementia pugilistica* studied and reported by the medical authorities cited above.[23]

105. Plaintiff and the other members of the Class experienced repetitive TBIs during their college football careers that significantly increased their risk of developing neurodegenerative disorders and diseases, including but not limited to: memory loss, dementia, depression, CTE, Alzheimer's disease, Parkinson's disease, other neurocognitive disorders/injuries, and related symptoms.

106. The repetitive head acceleration-deceleration, or "whiplash" hits, to which Plaintiff and the other members of the class were exposed to on a regular basis presented risks of latent and long-term debilitating chronic illnesses. Absent the NCAA's negligence and concealment, the risks of harm to Plaintiff and the other members of the Class would have been materially lower, and they would not have sustained the brain damage from which they currently suffer.

107. The repetitive impacts and TBIs Plaintiff and the other members of the Class sustained while playing football at SUU resulted in neurocognitive and

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[23] *See, e.g., supra* at ¶¶ 38-77.

neurobehavioral changes in Plaintiff and the other members of the Class, including neurocognitive disability, decline, and forgetfulness, all of which will have affected the quality of their lives and will require ongoing future medical care.

108. As a direct and proximate result of the NCAA's negligence, Plaintiff and the other members of the Class have incurred damages in the form of permanent brain damage, emotional distress, past and future medical costs, health care, home care expenses, other out-of-pocket expenses, lost time, lost future earnings, and other damages. Plaintiff and the other members of the Class will likely incur future damages caused by the NCAA's negligence.

109. As a result of their misconduct, the NCAA is liable to Plaintiff and the other members of the Class for the full measure of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class, seeks actual damages for the NCAA's negligence, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT II:
FRAUDULENT CONCEALMENT
(*Individually and on Behalf of the Class as Against Defendant*)

110. Plaintiff incorporates by reference all of the foregoing allegations.

111. The NCAA knew that repetitive head impacts in football games and full-contact practices created a substantial and real risk of harm to student-athletes. This risk of harm is similar or identical to the risks borne by boxers who suffer repetitive impacts to the head during practices and matches, as well at the risk to professional football players, many of whom have been forced to retire due to TBIs and the resulting neurological injuries and disease.

112. The NCAA was aware of and understood the significance of the published medical literature described in the preceding paragraphs of this Class Action Complaint, which detailed the serious risk of short-term and long-term brain injury associated with the repetitive traumatic impacts to the head to which SUU football players were regularly exposed.

113. The NCAA was willfully blind to and/or knowingly concealed from Plaintiff and the other members of the Class the risks of TBIs to student-athletes participating in SUU football games and practices, including the risks associated with returning to physical activity too soon after sustaining a TBI.

114. By concealing material facts, the NCAA intended to induce a false belief under circumstances creating a duty to speak. Specifically, the NCAA intended to induce a false belief that Plaintiff and the other members of the Class that it was safe to continue to participate in the SUU football program (and that Plaintiff and the other members of the Class should not be prevented from continuing to participate in the football program) after a TBI, or even multiple TBIs, despite the fact such injuries require time and rest to properly heal.

115. Plaintiff and the other members of the Class could not have reasonably been expected to know or discover the truth about the risks associated with TBIs, or were prevented or mislead from obtaining such truthful information. Plaintiff and the other members of the Class were under the care and treatment of the NCAA, and justifiably relied on its silence when the NCAA had an obligation to disclose the facts concerning the risk of TBIs sustained while participating in football.

116. Given the NCAA's superior and unique vantage point, Plaintiff and the other members of the Class reasonably looked to and relied upon the NCAA for guidance on TBIs, including the later-in-life consequences of the repetitive injuries Plaintiff (and many others) sustained while playing NCAA football at SUU.

117. This concealed information was such that Plaintiff and the other members of the Class would have acted differently if they had been aware of the material facts known to, and concealed by, the NCAA. Had Plaintiff and the other members of the Class known the full facts in the NCAA's possession, they: (1) would not have continued to play football after sustaining a TBI; or (2) would have taken additional time off from participating to allow their injuries to fully heal before returning to play; or (3) would have taken additional precautions while playing football; or (4) would not have continued to play college football at all. Despite the NCAA's knowledge, they failed to act reasonably by developing appropriate guidelines regarding "return-to-play" criteria and other meaningful safety procedures. The NCAA's inaction and concealment greatly increased the risks of long-term injury and illness to their student-athletes, including Plaintiff and the other members of the Class.

118. As a direct and proximate result of the NCAA's knowing concealment and/or willful blindness, Plaintiff and the other members of the Class have suffered, and will continue to suffer, substantial injuries, emotional distress, pain and suffering, and economic and non-economic damages that are ongoing in nature.

119. As a result of their misconduct, the NCAA is liable to Plaintiff and the other members of the Class for the full measure of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class, seeks actual damages for the

NCAA's fraudulent concealment, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT III:
BREACH OF EXPRESS CONTRACT
(*Individually and on Behalf of the Class as Against Defendant*)

120. Plaintiff incorporates by reference all of the foregoing allegations.

121. As a football player at SUU, an institution whose athletic programs are governed by the NCAA, Plaintiff and the other members of the Class were required to, and did, enter into a contract with the NCAA as a prerequisite to sports participation. The contract required Plaintiff and the other members of the Class to complete a form affirming that they had read the NCAA regulations and applicable NCAA Division manual, which expressly encompassed the NCAA Constitution, Operating Bylaws, and Administrative Bylaws, and further, that he agreed to abide by NCAA Division bylaws.

122. In exchange for Plaintiff's and the Class members' agreement, the NCAA promised to perform certain services and functions, including, *inter alia*:

a. Conducting intercollegiate athletics in a manner designed to protect and enhance the physical and educational welfare of student-athletes;

b. Requiring that each member institution protect the health of, and provide a safe environment for, each of its participating student-athletes; and

c. Requiring that each member institution must establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience.

123. By signing and agreeing to abide by NCAA regulations, and thereafter participating in a NCAA-sanctioned sports program in accordance with such regulations, Plaintiff and the other members of the Class fulfilled their contractual obligations to the NCAA.

124. As described in the foregoing allegations, the NCAA breached the Parties' agreement by failing to ensure that SUU student-athletes were provided with a safe environment in which to participate in NCAA athletics. The NCAA further breached the contract by concealing and/or failing to properly educate and warn players about the symptoms and long-term risks of TBIs.

125. Plaintiff entered into a written agreement with the NCAA in which he committed to play football at SUU, to attend SUU as a student, and to comply with all applicable codes of conduct and obligations as both a football player and a student.

126. That contract required the NCAA to fulfill its obligations to Plaintiff and the other members of the Class, and those obligations included:

a. To conduct their football program in a manner designed to protect and enhance the physical and educational well-being of its student-athletes, including Plaintiff and the other members of the Class; and

b. To furnish a safe environment for all of its football program's participants.

127. Plaintiff and the other members of the Class fulfilled their contractual obligations.

128. The NCAA's contractual breaches caused Plaintiff and the other members of the Class to suffer physical injury and damages in the form of past, ongoing, and future medical expenses.

129. As a result of its misconduct, the NCAA is liable to Plaintiff and the other members of the class for the full measure of damages allowed under applicable law. Plaintiff, individually and on behalf of all members of the Class, seeks actual damages for the NCAA's contractual breaches, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT IV:
BREACH OF IMPLIED CONTRACT
(*Individually and on Behalf of the Class as Against Defendant*)

130. Plaintiff incorporates by reference all of the foregoing allegations.

131. To the extent that an express written contract cannot be established among Plaintiff, the Class, and the NCAA, the foregoing recitation of facts and discussion support the finding of an implied contract.

132. Under this implied contract, Plaintiff and the other members of the Class agreed to submit and be bound by NCAA regulations as a prerequisite to athletic participation at SUU. One condition of this implied contract, amongst many others, required that the NCAA abide by its own Constitution and Bylaws (as described above).

133. Likewise, between the years of 1952 and 2010, Plaintiff and the other members of the Class agreed to be bound by the rules and regulations set forth by the NCAA in exchange for participating in the SUU athletic programs controlled and administered by the NCAA (including varsity football). One condition of this implied contract, amongst many others, required that the NCAA abide by the its own governing documents (as described above).

134. In exchange for Plaintiff's and the Class members' implicit agreement, the NCAA promised to perform certain services and functions, including, *inter alia*:

a. Conducting intercollegiate athletics in a manner designed to protect and enhance the physical and educational welfare of student-athletes;

b. Requiring that each member institution protect the health of, and provide a safe environment for, each of its participating student-athletes; and

c. Requiring that each member institution must establish and maintain an environment in which a student-athlete's activities are conducted as an integral part of the student-athlete's educational experience.

135. By agreeing to abide by NCAA regulations, and thereafter participating in a NCAA-sanctioned sports program in accordance with all such regulations, Plaintiff and the other members of the Class fulfilled their contractual obligations to the NCAA.

136. As described in the foregoing allegations, the NCAA breached this implied contractual agreement by failing to ensure that its student-athletes were provided with a safe environment in which to participate in their NCAA sport activities. The NCAA further breached these contracts by concealing and/or failing to properly educate and warn student-athletes about the symptoms and long-term risks associated with TBIs.

137. This implied contract required that the NCAA fulfill its obligations to Plaintiff, and those obligations included:

a. To conduct their football programs in a manner designed to protect and enhance the physical and educational well-being of its student-athletes, including Plaintiff and the other members of the Class; and

b. To furnish a safe environment for student-athletes.

138. Plaintiff and the other members of the class fulfilled their obligations under the contract.

139. The NCAA's contractual breaches caused Plaintiff and the other members of the Class to suffer physical injury and damages in the form of past, ongoing, and future medical expenses.

140. As a result of its misconduct, the NCAA are liable to Plaintiff for the full measure of damages allowed under applicable law. Plaintiff, individually and on behalf of all members of the Class, seeks actual damages for the NCAA's contractual breaches, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT V:
BREACH OF EXPRESS CONTRACT
(*Individually and on Behalf of the Class as Third-Party Beneficiaries as Against Defendant*)

141. Plaintiff incorporates by reference all of the foregoing allegations.

142. To the extent that no express or implied contract is found to exist between Plaintiff and the NCAA, an express contract existed between the NCAA and SUU. Under the terms of that contract, the NCAA and SUU agreed to abide by the applicable NCAA rules and regulations, including those expressly set forth in the NCAA's Division Manuals, Constitution, and Bylaws.

143. Under the terms of that contract, which, upon information and belief, are substantially similar to the terms set forth in the NCAA Constitution and encompassed within the NCAA Division Manuals, the NCAA agreed to, among other things: (1) conduct intercollegiate athletic programs in a manner designed to protect and enhance the physical and educational well-being of student-athletes; and (2) protect the health of, and provide a safe environment for, each of its participating student-athletes.

144. Plaintiff and the other members of the Class are the intended third-party beneficiaries of the contract between the NCAA and SUU. Such an intention can be found in the express language of the NCAA's rules and regulations, as well as the stated purpose and principles of the NCAA.

145. The NCAA breached the contractual duties it owed to Plaintiff and the other members of the Class under that contract by: (1) failing to implement or require guidelines and "return-to-play" criteria to minimize or prevent the risk of TBIs; and (2) failing to adequately inform and educate SUU football student-athletes regarding the symptoms and long-term dangers of TBIs.

146. As a direct result of the NCAA's breach, Plaintiff and the other members of the Class suffered physical injury and damages in the form of past, ongoing, and future medical expenses, and other out of pocket expenses, lost time, lost future earnings, and other damages. Further, Plaintiff and the other members of the Class will likely incur future damages caused by the NCAA's conduct.

147. As a result of their misconduct, the NCAA are liable to Plaintiff for the full measure of damages allowed under applicable law. Plaintiff, individually and on behalf of the Class, seeks actual damages for NCAA's contractual breaches, as well as interest, reasonable attorneys' fees, expenses, and costs to the extent allowable.

COUNT VI:
UNJUST ENRICHMENT
(*In the Alternative to Breach of Contract Counts*)
(*Individually and on Behalf of the Class as Against Defendant*)

148. Plaintiff incorporates by reference all of the foregoing allegations, excluding paragraphs 120-147.

149. The NCAA and SUU receive significant revenues from the collegiate football played by student-athletes. These revenues include, but are not limited to, contractual revenues from broadcasting, merchandising agreements, and ticket sales.

150. The NCAA appreciates and has knowledge of such benefits.

151. Under principles of equity and good conscience, the NCAA should not be permitted to retain the profits they received at the expense of Plaintiff and the other members of the Class while refusing to pay for medical expenses incurred as a result of their unlawful actions or otherwise failing to prevent such injuries.

152. Plaintiff, individually and on behalf of the Class, seeks restitution and/or disgorgement of all monies the NCAA has unjustly received as a result of their conduct alleged herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Mark D. Courtney, individually and on behalf of the Class, requests that the Court enter an Order providing for the following relief:

A. Certify this case as a class action on behalf of the Class defined above, appoint Plaintiff as Class Representative, and appoint his counsel as Class Counsel;

B. Declare that Defendant's actions, as set out above, constitute negligence, fraudulent concealment, breach of contract, and unjust enrichment;

C. Award all economic, monetary, actual, consequential, compensatory, and punitive damages caused by Defendant's conduct, including without limitation damages for past, present, and future medical expenses, other out-of-pocket expenses, lost time and interest, lost future earnings, and other damages. Further, Plaintiff and the Class will likely incur future damages caused by Defendant's misconduct;

D. Award Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

E. Award Plaintiff and the Class pre- and post-judgment interest, to the extent allowable;

F. Enter injunctive and/or declaratory relief as is necessary to protect the interests of Plaintiff and the Class; and

G. Award such other and further relief as equity and justice may require.

JURY DEMAND

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted,

MARK D. COURTNEY, individually and behalf of all others similarly situated.

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ATTORNEYS FOR PLAINTIFF AND THE CLASS

DATE: October 6, 2016